IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1132 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

STATE OF GUJARAT

Versus

DHARMAGAR DEVGAR APARNATHI BAVAJI

Appearance:

1. Criminal Appeal No. 1132 of 1998

MR MA BUKHARI APP for Petitioner No. 1

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 27/09/2002

C.A.V. JUDGEMENT

1. This appeal for enhancement of punishment is filed by the State from the judgment of the learned

Sessions Judge, Jamnagar in Criminal Case No.9 of 1998. The original accused being found guilty of the offence under Section 8 read with sections 20 (b) (i) of the Narcotic Drugs & Psychotropic Substances Act, 1985 ('the Act' for short), he was sentenced to rigorous imprisonment for six months and fine of Rs.500/-, in default, further simple imprisonment for one month. While imposing the punishment, the Court considered the contentions of the accused being a poor person having young children and also considered the quantity of 900 grams of ganja which was recovered from him.

2. The learned Additional Public Prosecutor Mr.Bukhari contended that in a serious case under the Act the Court ought to have taken a strict and serious view when the contraband substance in nearly a commercial quantity was recovered from him.

3. The learned counsel Mr.Lakhani appearing for the original accused submitted that the Parliament in its wisdom has amended the provisions of the Act by the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 to define 'small quantity' as '1000 grams' for the contraband goods in sub-clause (xxiii-a) of section 2 and 'commercial quantity' as '20 kg.' in sub-clause (vii-a) of section 2. Therefore, the ganja recovered from the accused was not in commercial quantity and the maximum punishment prescribed for possessing 'small quantity' would not exceed rigorous imprisonment for six months and fine of Rs.10,000/-, or with both under the provisions of sub-section (b) (ii) (A) of section 20 of the amended Act. It was fairly conceded that the provisions of the Amendment Act are not applicable to the cases pending in appeal by virtue of the express proviso to the provisions of section 41 (1) of the Amendment Act. However, the policy of the legislature is reflected in the aforesaid amendment and can be taken into account in sympathetically considering the aspect of punishment in this case. He also urged that in view of the social status, liabilities and poverty of the respondent, the Court may take a lenient view in the matter of enhancement of the punishment and so as not to require the respondent to, at least, undergo a further term of imprisonment after more than three years of being released from jail.

4. Considering the submissions of the learned A.P.P. and the learned counsel Mr.Lakhani, it appears that the respondent has already served the term of six months of rigorous imprisonment and any further term of imprisonment would be harsh and have deleterious effect

on his resettled life. But looking to the gravity of the offence, the relevant penal provisions then prevailing and the subsequent legislative changes brought about by the amendment, the punishment is required to be enhanced and the ends of justice would be met if he is ordered to pay, by way of fine, an additional sum of Rs.5,000/-. Accordingly, the appeal is partly allowed and the judgment and order of the learned Sessions Judge, Jamnager is modified to the extent that the respondent shall pay a further sum of Rs.5,000/- by way of fine and, in case of default in paying the same within six weeks from today, he shall undergo simple imprisonment for a period of six months. Order accordingly.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)